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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/797,909

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Heinrich Salzer

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06/07/2007

EXAMINER

PAINTER, BRANON C

ART UNIT

PAPER NUMBER

3609

MAIL DATE

DELIVERY MODE

06/07/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/797,909	SALZER, HEINRICH	
	Examiner	Art Unit	
	Branon C. Painter	3609	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4 is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>06/25/04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on 06/25/2004 is being considered by the examiner.

Drawings

3. 35 U.S.C. 112, first paragraph, requires the specification to be written in "full, clear, concise, and exact terms." The specification is replete with terms which are not clear, concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112, first paragraph. Examples of some unclear, inexact or verbose terms used in the specification are: "horizontal frame legs 8" (page 6, line 6) and "panel 8" (page 6, line 8); "glass pane 15" (page 6, line 34) and "intermediate layers 15" (page 8, line 5); etc. A single reference character cannot be used to designate multiple elements.

Specification

4. The abstract of the disclosure is objected to because of the following informalities:
"etct." For the purpose of this examination, the examiner presumes that etct. should read etc. Appropriate correction is required.
5. The disclosure is objected to because of the following informalities: page 7, line 14, "BV." For the purpose of this examination, the examiner presumes that BV should read Bv. Appropriate correction is required.

Claim Objections

6. Claim 2 is objected to because of the following informalities: "merely accessible" in lines 5-6 is vague and indefinite. It appears the applicant is suggesting that screws are only accessible in the opened state, not that they are merely accessible in the opened state. Appropriate correction is required.
7. Claim 3 is objected to because of the following informalities: "sheetmetal" is not a word. For the purposes of this examination, the examiner presumes that sheetmetal should read sheet metal (or alternatively, sheet-metal). Appropriate correction is required.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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9. Claim 2 recites the limitation "the associated glass holding strips" in lines 3 and 4.

There is insufficient antecedent basis for this limitation in the claim. For the purposes of this examination, the examiner presumes that associated glass holding strips refer to glass holding strip (19) in Figure 2a.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eichhorn (U.S. Patent No. 6,240,685) in view of Stibolt (U.S. Pub. No. 2003/0070370).

- a. Eichhorn discloses a cover element for the opening of a building, including:
 - i. "Two mutually opposite visible sides which are each provided with a plurality of glass fields..." (Figure 1).

- ii. "...which are each delimited by regions made of a metallic material..."
(Figure 1; "the simulated muntins may be...metal", column 4, lines 18-19;).
- iii. "...between which a glass pane is arranged which extends substantially over the entire surface of the sheet-metal plate..."
(Figure 1).
- iv. "...with the glass fields each having a size which prevents the penetration by persons, with the glass pane and the sheet metal plate being arranged within frame elements enclosing the cover element in circular fashion..." (Figure 1).

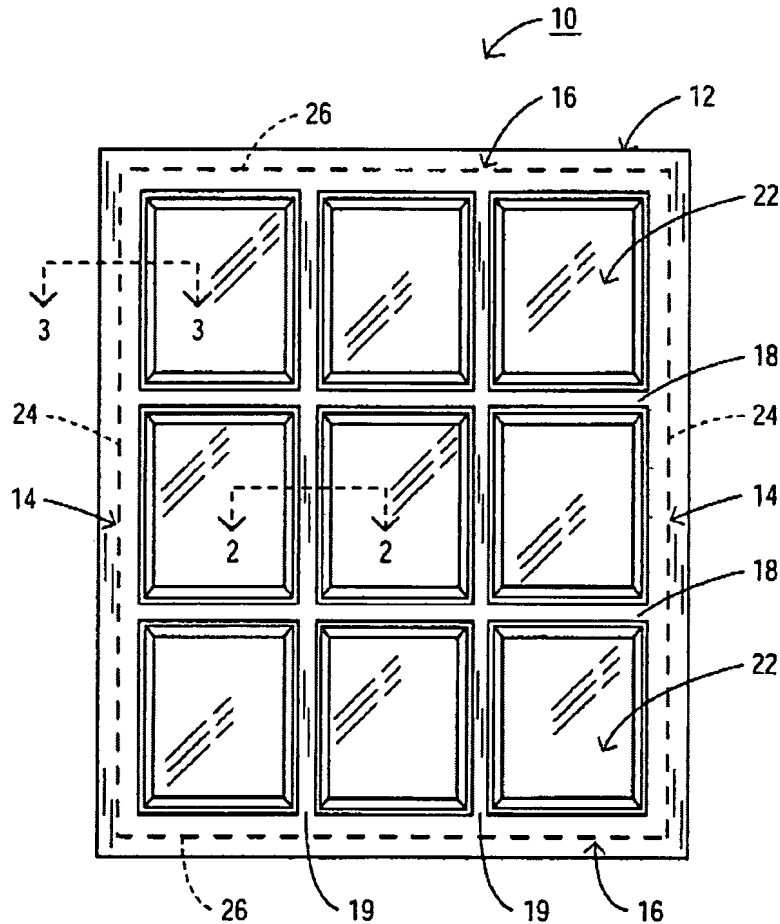


FIG. 1

Reproduced from U.S. Patent No. 6,240,685

- b. Eichhorn does not expressly disclose the welding of the sheet metal plate to a frame element.
- c. Stibolt teaches that when connecting two metal plates, it is common knowledge in the art to use the method of welding: “However, the preferred means of joining each miter-jointed end is to fuse or weld each end to each other.” (paragraph 53, lines 6-8). The use of welding as taught by Stibolt

provides an enhanced connection for the two plates by forming an air- and water-tight seal.

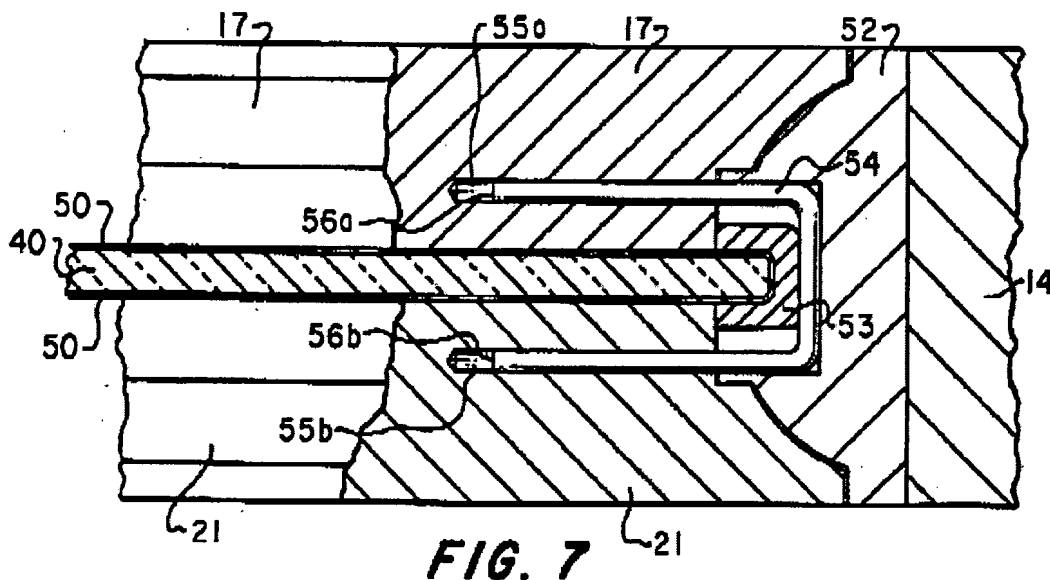
- d. The examiner further notes motivation for combining the references as set forth in Stibolt: by welding, "an air and water tight seal is formed between each adjacent portion" (paragraph 53, lines 8-9).
- e. Eichhorn and Stibolt are analogous art because both are from the same field of endeavor of window structures.
- f. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to connect the cover element to the frame element by welding the two together. Furthermore, it would have been obvious to make this modification in order to create an air- and water-tight seal between the elements.
- g. The examiner notes that due to the phrase "incorporated by means of a cutting method," claim 1 is considered to be a product-by-process claim, and it has been held that even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. Additionally, the patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985) {see MPEP 2113}.

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13. Claims 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eichhorn (U.S. Patent No. 6,240,685) in view of Stibolt (U.S. Pub. No. 2003/0070370) as applied to claim 1 above, and further in view of Dazo (U.S. Patent No. 5,487,245).

- a. Eichhorn in view of Stibolt discloses a cover element for the opening of a building as set forth above.
- b. Eichhorn in view of Stibolt does not expressly disclose that a sheet metal plate facing a web of a frame leg projects on the edge side beyond the glass pane and is welded together with a side surface of the frame element extending perpendicular to the visible side of the cover element [claim 3], or that the glass pane is clamped between the sheet metal plates [claim 5].
- c. Dazo discloses a sheet metal plate ("front muntin" 21, "back muntin" 17, Figure 7) facing a web of a frame leg ("stile trim" 52, Figure 7). The sheet metal plate projects on the edge side beyond the glass pane (Figure 7) [claim 3]. Dazo also discloses a glass pane ("unitary light transmissive sheet" 40, Figure 7) clamped between the sheet metal plates [claim 5].
- d. Stibolt teaches it is common knowledge in the art to connect two metal pieces using the method of welding. Therefore at the time of invention, it would have been obvious to a person of ordinary skill in the art to connect the side surface of the frame element to the visible side of the cover element by welding them together.

- e. Eichhorn, Stibolt, and Dazo are analogous art because both are from the same field of endeavor of window structures.
- f. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use the welding method of Stibolt to connect the cover element of Eichhorn in view of Stibolt with a side surface, since welding is known to provide strong connections between welded members.



Reproduced from U.S. Patent No. 5,487,245

14. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eichhorn (U.S. Patent No. 6,240,685) in view of Stibolt (U.S. Pub. No. 2003/0070370) as applied to claim 1 above, and further in view of DeBlock et al. (U.S. Patent No. 6,546,682).

- a. Eichhorn in view of Stibolt discloses a cover element for the opening of a building as set forth above.

- b. Eichhorn in view of Stibolt does not expressly disclose that the sheet metal plate rests on a web projecting in the cross section of the respective frame element [claim 6], or that a sealing profile is arranged between a sheet metal plate and the web of the frame element [claim 7].
- c. DeBlock et al. discloses a sheet metal plate (outside edges of "door" 100, Figure 3) resting on a web ("door-engagement flange" 46, Figure 3) projecting into the cross section of the respective frame element [claim 6]. A sealing profile ("gasket" 80a, Figure 3) is arranged between the sheet metal plate and frame element web [claim 7].
- d. Eichhorn, Stibolt, and DeBlock et al. are analogous art because both are from the same field of endeavor of door structures.
- e. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the cover element of Eichhorn in view of Stibolt to use a web and sealing profile to secure the sheet metal plate to the framing element as taught by DeBlock et al., since the web and sealing profile are known to create a strong connection.

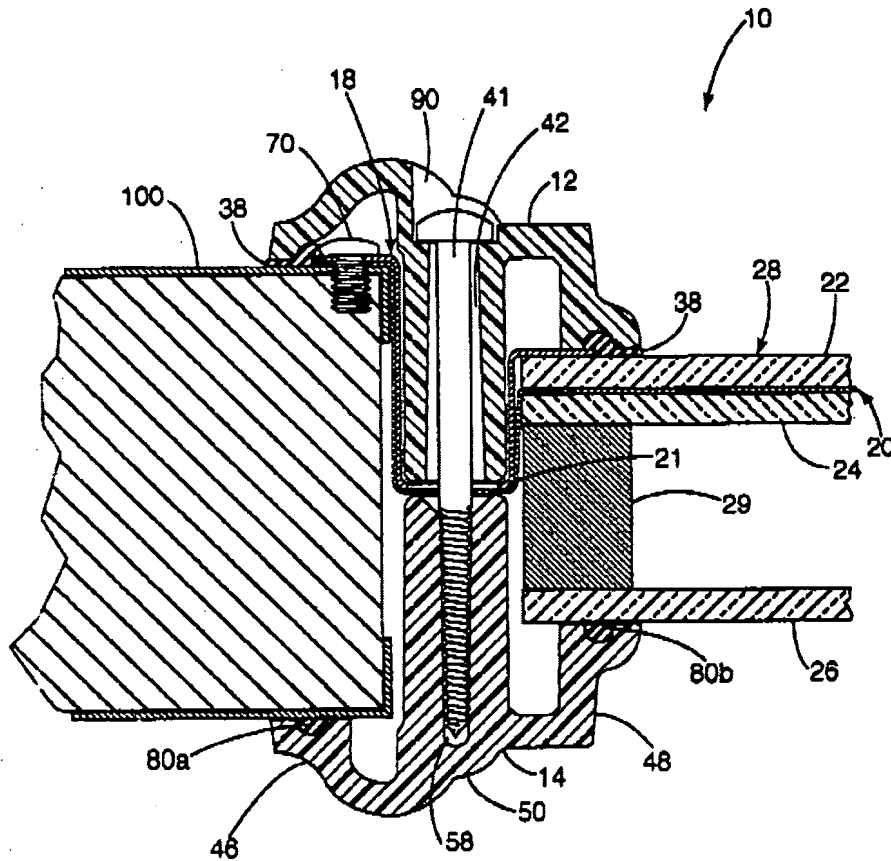


Fig. 3

Reproduced from U.S. Patent No. 6,546,682

15. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eichhorn (U.S. Patent No. 6,240,685) in view of Stibolt (U.S. Pub. No. 2003/0070370) as applied to claim 1 above, and further in view of Huynh (U.S. Patent No. 7,104,015).
- a. Eichhorn in view of Stibolt discloses a cover element for the opening of a building as set forth above.
 - b. Eichhorn in view of Stibolt does not expressly disclose an intermediate layer of cellular rubber arranged between the glass pane and the sheet metal plates.

- c. Huynh discloses a gasket ("glazing gasket" 32, Figure 2a) serving as an intermediate between a glass pane ("glass pane" 20, Figure 2a) and a metal plate ("glazing frame" 14, Figure 2a; "A glazing frame 14 is also made of a metal or other suitable material," column 2, lines 50-51). The use of the intermediate gasket provides the assembly with a water-tight seal.
- d. Eichhorn in view of Stibolt, and further in view of Huynh discloses the claimed invention except for the specific use of cellular rubber. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the gasket out of cellular rubber, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.
- e. The examiner further notes motivation for combining the references as set forth in Huynh: "Application of glazing gasket 32 or sealant 54 provides water-tight result to the window assembly" (Abstract).
- f. Eichhorn, Stibolt, and Huynh are analogous art because both are from the same field of endeavor of window structures.
- g. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify Eichhorn as taught by Huynh to add a layer of rubber material between the glass pane and sheet metal plate in order to form a water-tight seal.

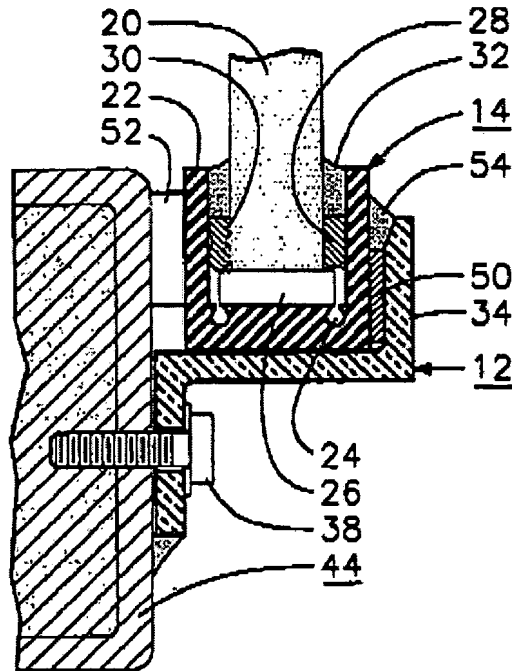


FIG. 2A

Reproduced from U.S. Patent No. 7,104,015

Allowable Subject Matter

16. Claim 4 is allowed.

17. Claim 2 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Branon C. Painter whose telephone number is (571) 270-3110. The examiner can normally be reached on Mon-Fri 7:30AM-5:00PM, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Victor Batson can be reached on (571) 272-6987. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Victor Batson
Supervisory Patent Examiner
Art Unit 3609

Branon Painter
04/11/2007